

No. 16163 ✓

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
CALIFORNIA BANK, Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

NOV 21 1958

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief Civil Division,

BURTON C. JACOBSON,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

For Appellee:

SWANWICK, DONNELLY & PROUDFIT,
DONALD O. WELTON,
629 So. Spring Street,
Los Angeles 14, California. [1]

* Page numbers appearing at bottom of page of Original Transcript of Record.

United States District Court, Southern District
of California, Central Division

Civil No. 18656-WB

UNITED STATES OF AMERICA,
Plaintiff,
vs.

CALIFORNIA BANK OF LOS ANGELES, a
Corporation, Defendant.

COMPLAINT FOR MONEY ON FORGED
CHECKS (TREASURY)

Comes now the United States of America, plaintiff above named, and for cause of action against the defendant above named complains and alleges as follows:

I.

That this is a suit of a civil nature, commenced by the United States of America, and this Court has jurisdiction of this action by virtue of the provisions of Title 28, § 1345, United States Code.

II.

That during all times herein mentioned United States of America was and now is a corporation sovereign. [2]

That the defendant, California Bank of Los Angeles, at all times herein mentioned was and now

is a corporation, transacting business in the County of Los Angeles, State of California.

IV.

That all of the transactions herein involved occurred in the County of Los Angeles, in the State and Southern District of California, and within the jurisdiction of this Court.

V.

That the defendant above named is indebted to the plaintiff in the sums hereinafter set forth, with interest thereon at the rate of six per cent per annum from the dates hereinafter set forth opposite said sums:

\$119.70	4-29-49
170.60	4-28-49
223.30	4-23-49

upon a written contract of guarantee and for money paid by mistake under the following circumstances:

VI.

That on the dates hereinafter set forth checks were drawn on the Treasurer of the United States by H. Rogers, Regional Disbursing Officer, Symbol 415, U. S. Treasury Department, payable to the order of the payees hereinafter listed, photostatic copies of which checks are annexed hereto and marked "Exhibit A" and made a part hereof by reference; that the following list sets forth the check number, the date of issuance, the amount, symbol and name of payee: [3]

Check No.	Date	Amount	Symbol	Payee
11,098.392	3-16-49	\$119.70	415	Lonnie D. Ashford
11,098.440	3-16-49	170.60	415	Raymond P. Cortez
11,050,701	3-11-49	223.30	415	Paul S. Crawford

VII.

That on the dates listed in paragraph V above the defendant, California Bank of Los Angeles, a corporation, presented said checks to the plaintiff, through the Los Angeles Branch of the Federal Reserve Bank of San Francisco, fiscal agent of the Treasurer of the United States, with the names of the payees listed in paragraph VI above written upon the backs thereof, and with the endorsements thereon of the defendant, California Bank of Los Angeles, a corporation, in the manner and words and figures as shown on the reverse side of said "Exhibit A", said defendant's aforesaid endorsement, including the words "Prior Endorsements Guaranteed".

VIII.

That thereupon the plaintiff, through the said Federal Reserve Bank of San Francisco, relying upon the said guarantees by the defendant, California Bank of Los Angeles, a corporation, that the names written upon the backs of said checks were the genuine signatures and endorsements of the payees, and relying upon the representation by the said defendant that it had valid title to said checks, paid the amounts thereof to the defendant, California Bank of Los Angeles, a corporation.

IX.

That the said names of the payees set forth in paragraph VI above were the names of fictitious and nonexistent persons; that the plaintiff had no knowledge of the foregoing either at the time the aforesaid checks were issued or at the time plaintiff paid the amount thereof to the defendant, as aforesaid.

X.

That the names of the said payees endorsed upon the aforesaid checks were forged and had been wrongfully and fraudulently written upon the same by persons other than the named payees who were fictitious and nonexistent persons, as aforesaid. [4]

XI.

That the payments of said checks paid by the plaintiff to the defendant as described in paragraph VIII of this complaint were made under a mistake of fact and without knowledge that the signatures of the said payees thereon had been forged upon the back of said checks, and that the said payees were fictitious and nonexistent persons.

XII.

That the names of the payees written upon the backs of said checks were not the genuine signatures and endorsements of payees named upon the face of said checks, nor did said defendant receive said checks from the payees thereon named; in truth and in fact the purported endorsements were forgeries and the defendant, California Bank of

Los Angeles, a corporation, when it presented said checks and received payment of the amounts thereof, as aforesaid, had no valid or legal title to said checks.

XIII.

That upon discovery of the aforesaid forgeries and the want of title of the defendant, California Bank of Los Angeles, a corporation, the plaintiff, through the said Federal Reserve Bank of San Francisco, gave notice thereof to the said defendant and demanded the return of the sums paid to said defendant upon said checks, but the said defendant refused to repay to the plaintiff the said sums or any part thereof.

XIV.

That prior to the commencement of this action, the plaintiff demanded from said defendant the sums above mentioned, but the said defendant has failed, neglected and refused, and still fails, neglects and refuses, to repay to the plaintiff the said sums or any part thereof. The whole thereof in the amounts listed in paragraphs V and VI, together with interest thereon at the rate [5] of six per cent per annum from the dates set forth in paragraph V of this complaint, is now due, owing and unpaid to the plaintiff from the defendant.

Wherefore, plaintiff prays judgment against the defendant, California Bank of Los Angeles, a corporation, in the sum of \$513.60, together with interest thereon at the rate of six per cent per annum,

and for its costs incurred herein, and for such other and further relief as to this Honorable Court may seem meet, just and proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney,

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief
of Civil Division,

EDWIN H. ARMSTRONG,
Assistant U. S. Attorney,

/s/ EDWIN H. ARMSTRONG,
Attorneys for Plaintiff. [6]

LOS ANGELES, CALIF.,

11,098,392

2 Treasurer of the United States

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO

11-37
000

MAR 16 1949

PAY \$119 DOLLARS 70 CTS

\$119.70

TO THE
ORDER OF

LONNIE D ASHFORD
356 W 52ND PL
LOS ANGELES CALIF

PAID

25 MAR 1949

138 REGIONAL DISBURSING OFFICER

DO NOT FOLD, SPINDLE OR MUTILATE

KNOW YOUR ENDORSER -- REQUIRE IDENTIFICATION

415

The payee should endorse below in ink or indelible pencil.

If the endorsement is made by mark (X) it must be witnessed by two persons who can write, giving their places of residence in full.

It is suggested that this check be promptly negotiated.

Lonnie D. Ashford
Harold R. Weingarten
1943

PAY TO THE ORDER OF

California Bank
KUNIN FURNITURE CO.

MAR 16 1949

MAR 16 1949

[Title of District Court and Cause.]

ANSWER

Comes now defendant California Bank, sued herein as California Bank of Los Angeles, and answers plaintiff's Complaint as follows:

I.

Denies that the name of this defendant is "California Bank of Los Angeles", and in this connection alleges that the true name of this defendant is "California Bank".

II.

Denies the allegations of paragraph V of plaintiff's Complaint. [8]

III.

Denies that plaintiff paid said checks in reliance upon this defendant's guarantee of the endorsements.

IV.

Admits that the names of the payees in said checks were fictitious and not the names of existing persons, but defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff had no knowledge thereof at the time the checks were issued and at the time they were paid.

V.

Denies the allegations of paragraphs X, XI, and XII of plaintiff's Complaint.

VI.

Admits that on or about October 18, 1949, plaintiff gave notice to defendant and demanded the return of the amount of said checks, but denies the allegation that said checks were forged and denies the allegation that this defendant did not have title thereto.

VII.

Admits that prior to the commencement of this action, plaintiff demanded from defendant the amounts listed in paragraphs V and VI of plaintiff's Complaint and that defendant refused to pay said amounts or any parts thereof, but denies the remaining allegations of paragraph XIV of plaintiff's Complaint.

As an Affirmative Defense to Plaintiff's Complaint, Defendant Alleges: [9]

I.

Defendant is informed and believes and, upon such information and belief, alleges that prior to the issuance of said checks one or more persons unknown to both plaintiff and defendant, but using the names Lonnie D. Ashford, Raymond P. Cortez, and Paul S. Crawford, filed with plaintiff income tax returns in each of said names showing overpayments of income tax as follows:

Name Inserted in Return	Amount Claimed as Overpayment
Lonnie D. Ashford	\$119.70
Raymond P. Cortez	170.60
Paul S. Crawford	223.30

II.

Defendant is informed and believes and, upon such information and belief, alleges that upon receipt of said returns and without first checking its records to ascertain whether the taxes claimed in said returns to have been paid to plaintiff had in fact been paid, and relying upon said returns which were false and fraudulent, plaintiff issued the three checks described in its Complaint.

III.

Defendant is informed and believes and, upon such information and belief, alleges that after said checks were issued plaintiff caused the same to be mailed to the respective payees at the addresses of said payees as set out in said returns.

IV.

Defendant is informed and believes and, upon such information and belief, alleges that each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued. [10]

V.

Defendant is informed and believes and, upon such information and belief, alleges that each of the checks described in plaintiff's Complaint was endorsed by the person plaintiff intended to be the payee thereof, and that none of the endorsements on said checks are forgeries.

Wherefore, defendant prays that plaintiff take

tiff issued the three checks described in its Complaint.

VI.

After said checks were issued, plaintiff caused the same to be mailed to the respective payees at the addresses of said payees as set out in said returns.

VII.

Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued. Said checks were then negotiated through various channels and in the course of business were deposited in defendant bank; in due course the bank endorsed said checks "All prior endorsements guaranteed" and presented them for payment, and they were paid by the government's fiscal agent.

VIII.

Upon discovery that a fraud had been committed, on or about October 18, 1949, plaintiff gave notice to defendant and demanded the return of the amount of said checks. Defendant refused to comply with such demand.

IX.

There are no pertinent facts other than those above mentioned, pertaining to the issuance, negotiation and payment of [15] the checks involved herein except facts admitted in the pleadings, and both plaintiff and defendant agree that a trial as to the facts is not necessary and that the Court may consider this matter as if the same had been

tried and all of the above-stated facts had been found to be true.

X.

It is agreed that this cause may be submitted to the Court for decision upon this stipulation.

Dated: This 12th day of May, 1958.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,

/s/ BURTON C. JACOBSON,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

SWANWICK, DONNELLY &
PROUDFIT,

/s/ By DONALD O. WELTON,
Attorneys for Defendant.

It is so ordered this 12th day of May, 1958.

/s/ WM. M. BYRNE,
United States District Judge. [16]

[Endorsed]: Filed May 12, 1958.

United States District Court, Southern District
of California, Central Division

Civil No. 18656-WB

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALIFORNIA BANK OF LOS ANGELES, a
corporation, Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

A stipulation admitting facts and consenting to the submission of this case for decision upon said stipulation was filed herein on May 12, 1958, and an order of submission was thereupon made, plaintiff appearing in the action by Laughlin E. Waters, United States Attorney, Richard A. Lavine and Burton C. Jacobson, Assistant United States Attorneys, and defendant appearing by Donald O. Welton of Swanwick, Donnelly & Proudfit, attorneys, and the Court having considered all of the pleadings and said stipulation of facts, and being fully advised in the premises, makes herein its Findings of Fact, Conclusions of Law and Judgment as follows:

Findings of Fact

1. This is a suit of a civil nature, commenced by [17] the United States of America, and this Court

has jurisdiction of this action by virtue of the provisions of Title 28, § 1345, United States Code.

2. During all times herein mentioned United States of America was and now is a corporation sovereign.

3. The true name of defendant is "California Bank" and it is a corporation organized under the laws of the State of California.

4. All of the transactions herein involved occurred in the County of Los Angeles, in the State and Southern District of California, and within the jurisdiction of this Court.

5. On the dates hereinafter set forth, the following checks were drawn on the Treasurer of the United States by H. Rogers, Regional Disbursing Officer, symbol 415, U. S. Treasury Department:

Check No.	Date	Amount	Symbol	Payee
11,098,392	3-16-49	\$119.70	415	Lonnie D. Ashford
11,098,440	3-16-49	170.60	415	Raymond P. Cortez
11,050,701	3-11-49	223.30	415	Paul S. Crawford

Photostatic copies of said checks are annexed to plaintiff's complaint.

6. Prior to the issuance of said checks, one or more persons unknown to both plaintiff and defendant, but using the names Lonnie D. Ashford, Raymond P. Cortez and Paul S. Crawford, filed with plaintiff income tax returns in each of said names showing overpayments of income tax as follows:

Name Inserted in Return	Amount Claimed as Overpayment
Lonnie D. Ashford	\$119.70
Raymond P. Cortez	170.60
Paul S. Crawford	223.30

7. Upon receipt of said returns and without first checking its records to ascertain whether the taxes claimed in said returns to have been paid to plaintiff had in fact been paid, and relying upon said returns which were false and fraudulent, plaintiff issued the three checks described in its Complaint on the dates set forth in paragraph 5 hereof, said checks being drawn on the Treasurer of the United States by H. Rogers, Regional Disbursing Officer, symbol 415, U. S. Treasury Department.

8. After said checks were issued, plaintiff caused the same to be mailed to the respective payees at the addresses of said payees as set out in said returns.

9. Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued. Said checks were then negotiated through various channels and in the course of business were deposited in defendant bank; in due course the bank endorsed said checks "All prior endorsements guaranteed" and presented them for payment, and they were paid by the government's fiscal agent.

10. Upon discovery that a fraud had been committed, on or about October 18, 1949, plaintiff gave notice to defendant and demanded the return of the amount of said checks. Defendant refused to comply with such demand.

From the foregoing Findings of Fact the Court [19] makes the following Conclusions of Law:

Conclusions of Law

1. This Court has jurisdiction over the subject matter hereof and of the parties hereto pursuant to Title 28 United States Code, Sections 1345 and 1348.

2. The defendant bank is not liable to the plaintiff upon its guaranty of all prior endorsements as such prior endorsements were not forged endorsements as claimed by plaintiff.

3. The United States of America is therefore not entitled to judgment against the defendant bank as contended in the prayer of the Complaint, and the defendant is entitled to judgment in its favor and against the United States of America.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, It is Ordered, Adjudged and Decreed:

1. That plaintiff, United States of America, take nothing by its said action, and that judgment be and the same is hereby entered in favor of defendant California Bank, a corporation, against plaintiff.

Dated at Los Angeles, California, this 11th day of June, 1958.

/s/ WM. M. BYRNE,

United States District Judge.

Approved as to form:

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
BURTON C. JACOBSON,
Assistant U. S. Attorney,
/s/ By BURTON C. JACOBSON,
Assistant U. S. Attorney. [21]

[Endorsed]: Filed and Entered June 12, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 12, 1958.

Dated at Los Angeles, California, this 25th day of July, 1958.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,
/s/ BURTON C. JACOBSON,
Assistant U. S. Attorney,
Attorneys for Plaintiff. [22]

[Endorsed]: Filed July 25, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 26, inclusive, containing the original:

Complaint.

Answer.

Stipulation admitting Facts and Order.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has not been paid by appellant.

Dated: August 27, 1958.

JOHN A. CHILDRESS,

Clerk,

/s/ By WM. A. WHITE,

Deputy Clerk.

[Endorsed]: No. 16163. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. California Bank, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division. Filed and Docketed: August 28, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

CA No. 16163

UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA BANK OF LOS ANGELES, a
corporation, Appellee.

APPELLANT'S STATEMENT OF POINTS ON
APPEAL AND DESIGNATION OF REC-
ORD TO BE PRINTED

The appellant hereby designates the following Points on Appeal in the above-entitled matter:

1. The district court erred in holding that defendant bank was not liable to the United States upon its guarantee or prior endorsements.

2. The district court erred in entering judgment for defendant bank.

Appellant Hereby Designates the following record to be printed in the above-entitled matter:

1. Complaint for money on forged checks (Treasury), filed August 25, 1955, including the check to the order of Lonnie D. Ashford which is part of Exhibit A to the complaint.

2. Answer, filed July 2, 1956.

3. Stipulation admitting facts and order, filed May 12, 1958.

4. Findings of fact, conclusions of law and judgment, filed June 12, 1958.

5. Notice of appeal.

Dated: This 3rd day of September, 1958.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ BURTON C. JACOBSON,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 10, 1958. Paul P. O'Brien, Clerk.